

# Standard Operating Procedures

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Effective January 28, 2002

## Special Park Uses

### I. Authorities

- A. NPS special park use guidelines are provided in:
  - Section 8.6 of NPS Management Policies
  - Director's Order #53
  - Reference Manual 53
- B. The authority to issue Director's Order #53 is contained in:
  - 16 USC 1 through 4
  - Part 245 of the Department of the Interior Manual
- C. Limits on the types of activities that may be allowed within the National Park System are contained in:
  - 1916 National Park Service Organic Act
  - 1978 amendment to the National Park Service General Authorities Act

### II. Guidance

- A. General – The National Park Service may permit a special park use if the proposed activity will not:
  - Cause injury or damage to park resources; or
  - Be contrary to the purposes for which the park was established; or
  - Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative locations within the park; or
  - Unreasonably interfere with the interpretive, visitor service, or other program activities, or with the administrative activities of the NPS; or
  - Substantially impair the operation of public facilities or services of NPS concessioners or contractors; or
  - Present a clear and present danger to public health and safety; or
  - Result in significant conflict with other existing uses.
- B. Mandatory or Discretionary – Some special park uses are specifically authorized in a park area's enabling legislation, which may indicate that permitting is mandatory or discretionary. In either case, the proposed use is considered to be both authorized and appropriate, as long as adequate safeguards are established to protect park resources, values, and visitors.
- C. Right or Privilege – The Superintendent must determine whether the request for a special park use is prohibited or mandated, or involves a right or a privilege. A right is based on property ownership, legislation or treaty entitlement, or Constitutional guarantee. Where none of these factors are present, the use is a privilege over which the Superintendent may exercise varying degrees of discretion and control.
- D. Compliance – Decisions to issue or deny special park uses may also be governed by compliance issues covered under the National Environmental Protection Act (NEPA), Section 106 of the National Historic Preservation Act of 1966 (NHPA), and other applicable laws.

- E. General Management Plans – The long range planning and guidance document for the park, the General Management Plan (GMP) and documents that emanate from the GMP, Action Plans, provide additional guidance to the Superintendent regarding permitted activities. Action plans include, but are not limited to, Commercial Use Plan, Landscape Management Plan, long range Interpretive Plan, and others.

### **III. Monetary Issues**

- A. Permit Fees and Cost Recovery – Fees and recovery costs will be charged for special use permits unless prohibited by law or Executive Order, or when the proposed use is protected by the First Amendment. The park retains the funds recovered for the cost of managing a special park use. The base fee for a special park use is \$50. Additional costs are added to the base fee dependent upon the need for greater NPS support. Such situations are addressed during the permittee application process.

- B. Permit Fee Waivers – A waiver from charging permit fees or recovery costs may be appropriate when:

- Charging and collecting are not cost-effective; or
- A waiver is considered an appropriate courtesy to a foreign government or international organization; or
- The permittee is a state, local, or Federal agency or Native American tribe or group; or
- The Superintendent determines that the proposed use will promote the mission of the NPS or promote public safety, health, or welfare.

- C. Other Fees and Donations – Permittees entering the park site for recreational purposes are subject to the same fees (entrance, user, etc.) as the general public. Permittees engaging in non-recreational use are exempt from such fees. Examples of non-recreational use are:

- First Amendment Rights;
- Agricultural;
- Grazing;
- Filming activities;
- NPS authorized research;
- Federal, state or local government business;
- Educational purposes.

Permittees may not collect admission or any other money associated with a special event while on park property. An applicant's offer of a donation will not in any way influence the decision to issue or deny a permit, nor have any affect on the way a permit is administered. If a permit applicant expresses an interest in making a donation, discussions of such must take place after the permitted activity is completed. The NPS may accept donations but may not solicit them.

- D. Commercial Activities - Activities not in compliance with the park's Commercial Use Plan are prohibited.

### **IV. Administrative Record** – An appropriate administrative record must be developed to include:

- A permit log;
- Permit copies;
- Background information;
- Discussion and decision rationale documentation;
- Determination of fees.

Permit renewal requests are considered by utilizing the same guidelines and processes as an original permit request.

- V. Permit Types** – There are two types of permits that may be used to authorize a special park use:
- A. Special Use Permit – Issued by the Superintendent to an individual or organization to allow the use of NPS administrative resources and to authorized activities in 36 CFR Parts 1-7 that require a permit.
  - B. Right-of-Way Permit – Issued by the Regional Director to authorize any new utilities, including water conduits, on NPS lands.
  - C. Other Permits – NPS issues other permits and signed agreements including but not limited to research, collection, and use of natural and cultural resources.
- VI. Considerations** – There are three primary reasons for issuing or renewing a permit, regardless of type:
- To impose conditions to manage the activity and prevent impairment or derogation of resources, values, and purposes for which the park was established;
  - To obtain the signature of the permittee agreeing to the conditions and other statements contained within the document; and
  - To establish a written account of the special use for inclusion in the administrative record.
- VII. Permit Provisions** – Measures to protect the United States’ interests are incorporated into permits for special park uses. Depending upon the activity, some or all of the following items must be included in the permit to ensure such protection:
- Performance bonds;
  - Liability insurance;
  - Property insurance;
  - Hold harmless/Indemnification;
  - Tort claims;
  - Anti-deficiency Act; and
  - Bankruptcy termination.
- VIII. Special Activities** – A number of special park use activities, requiring a permit, are governed by additional laws and/or regulations. Consult Director’s Order #53 and Reference Manual 53 for additional guidance related to the following special activities:
- Native American rights;
  - First Amendment rights (see park SOP for additional information);
  - Water rights;
  - Rights-of-way;
  - Agricultural use;
  - Domestic livestock management;
  - Filming and photography (see NPS-21 and park SOP for additional information);
  - Expired reservation of use and occupancy; and
  - Scientific research and related collecting.
- IX. Special Events** – Activities such as sporting events, regattas, public spectator attractions, entertainment, and ceremonies fall under the category of privileges. The Superintendent is required to apply the following guidelines to authorize special events:
- A meaningful association exists between the park area and the event;
  - The observance contributes to visitor understanding of the significance of the park; and
  - The Superintendent has issued a permit.

The permit request will be denied should, in the opinion of the Superintendent, the event would result in any of the items listed in section II.A. of this SOP.

#### **X. Permit Request Procedure**

- Requests for information regarding a special park use are referred to the park coordinator, Stacey Rickard.
- Interested parties are provided basic information and a special park use application (NPS Form 10-930) at least two weeks prior to the desired use.
- Once a completed application is received, the park coordinator reviews the request to determine whether additional information, such as maps, photographs, etc., is needed from the applicant.
- When the coordinator is satisfied with the application information, a permit is prepared for the Superintendent's review and approval.

#### **XI. Permit Approval and Issuance Procedure**

- The Superintendent reviews the permit and all applicable supporting information included.
- Consideration is based on the criteria stated in sections II, VI, and IX above. The extent to which the NPS is involved in the event is also considered. Depending upon the event or the organization involved, the Superintendent may require members of the Fort Sumter staff to be in attendance, and in such cases additional fees may be charged and added to the base permit fee.
- Whether the permit is approved or denied, the decision is documented. Permits that are denied have additional documentation provided to justify the Superintendent's decision.
- An approved permit is signed by the Superintendent and sent to the applicant for signature.
- The permittee then returns the original permit, signed, with the required fee.
- Applicable NPS staff members are notified of the permitted activity, and a copy of the permit is posted in the appropriate designated area.

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